

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2020-263-E**

Cherokee County Cogeneration Partners, LLC	)	
	)	<b>DUKE ENERGY CAROLINAS,</b>
	)	<b>LLC'S AND DUKE ENERGY</b>
Complainant,	)	<b>PROGRESS, LLC'S SECOND SET</b>
	)	<b>OF REQUESTS FOR PRODUCTION</b>
v.	)	<b>OF DOCUMENTS AND</b>
	)	<b>INTERROGATORIES TO</b>
Duke Energy Progress, LLC and	)	<b>CHEROKEE COUNTY</b>
Duke Energy Carolinas, LLC,	)	<b>COGENERATION PARTNERS, LLC</b>
	)	
Respondents.	)	

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Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together, “Duke Energy” or the “Companies”), by and through their legal counsel, pursuant to Rule 103-833(C) of the Rules of Practice and Procedure of the Public Service Commission of South Carolina (“Commission”), hereby serves Cherokee County Cogeneration Partners, LLC (“Cherokee”) with the following Second Set of Requests for Production and Interrogatories to be answered under oath on or before twenty (20) days from the date of service.

Further, please take notice that these Requests for Production and Interrogatories are continuing in nature until the date of the hearing, and that any information or responsive materials identified after your responses have been served upon the undersigned counsel should be provided via supplemental discovery responses as soon as possible after such identification.

## **INSTRUCTIONS**

1. Please produce the requested documents as they are kept in the usual course of business or to organize and label them to correspond with the categories in the Request. Documents attached to each other should not be separated.

2. In producing Documents, furnish all documents known or available to you, regardless of whether such documents are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys. All requests for Documents specifically request documents of Cherokee, Cherokee's parent company, LS Power, and/or Documents developed by or in the possession of Mr. Kurt Strunk of National Economic Research Associates, Inc. ("NERA"), who you have retained to provide testimony in this proceeding.

3. If any document otherwise responsive to any Request was, but is no longer, in your possession, subject to your control or in existence, identify each document by listing its author(s) and addressee(s), date, subject matter, whether the document(s) or copies are still in existence (and if so, their locations and the custodians), as well as whether the document is missing or lost, has been destroyed, has been transferred voluntarily to others, or has been otherwise disposed of. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing its destruction or transfer, and the date(s) of such direction or authorization.

4. If a privilege or objection as to any Request is claimed, identify with specificity the matter as to which the privilege or objection is claimed, the nature of the privilege or objection, and the legal and factual basis for each such claim, and provide a complete description of the information or document being withheld.

5. Unless otherwise stated, the relevant time period for these Requests is from June 1, 2018, until the present.

6. Physically or electronically segregate Documents produced in response to a particular Request from Documents produced in response to any other particular Request, and identify the Request to which they are responsive. If a Document is responsive to more than one particular Request, specify each Request to which such Document is responsive.

7. In producing Documents pursuant to a Request, please mark the documents with the specific data request number pursuant to which the Documents are being produced and mark each page of each Document produced with a Bates number.

8. All Documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should be provided in their native form.

9. These Requests are continuing in nature, such that you must provide a supplemental response if and when you discover, obtain, or recollect other or further information responsive to any Request. In addition, you must amend the answer to any Request if and when you discover or ascertain that the answer was incorrect.

10. Please provide responses to the following data requests electronically. To the extent this is impracticable, the responses, including any responsive Documents, should be provided at the offices of Robinson, Gray, Stepp & Laffitte, LLC, 1310 Gadsden Street, Columbia, South Carolina 29201, or some mutually convenient location otherwise agreed to by the parties.

### **DEFINITIONS**

1. **“Commission”** means the Public Service Commission of South Carolina.
2. **“Communication”** means the transmittal of information in the form of facts, ideas, Documents, inquiries, or otherwise, including every discussion, conversation, conference, or telephone call.
3. **“Complaint”** means the Complaint filed in the Docket on November 2, 2020.
4. **“DEP”** means Duke Energy Progress, LLC.
5. **“DEC”** means Duke Energy Carolinas, LLC.
6. **“Docket”** means Commission Docket No. 2020-263-E.
7. The term **“document”** is to be construed as broadly as permissible under Rule 34 of the South Carolina Rules of Civil Procedure and includes, but is not limited to, any printed, typewritten, handwritten or otherwise recorded information of whatever character, including, but not limited to, letters, memoranda, notes, diaries, reports, records, calendars, charts, audio and/or video tapes or discs, and photographs; computer programs or disks; electronic media records, however recorded and maintained, including, but not limited to, electronic mail, voicemail messages, digital photographs and electronically scanned records of any type; recorded observations, statements, conversations or formal affidavits. Any carbon or photocopy of any such materials upon which notations have been made and all drafts are also included.
8. **“You”** and **“your”** means the Cherokee County Cogeneration Partners, LLC (“Cherokee”), Cherokee’s parent company, LS Power, and/or Cherokee’s witnesses

in this proceeding, including but not limited to, your retained witness from NERA, and all of their members, agents, representatives and attorneys.

9. **“Person”** means any natural person or any business, legal, or governmental entity or association.

10. The terms **“related to”** and **“relating to”** or any variation thereof shall be construed to include refer to, summarize, reflect, constitute, contain, embody, mention, show, comprise, evidence, discuss, describe, comment on, concerning, regarding, eluding to, pertaining to, probative of, in connection with, dealing with, in respect of, about, involved, identifying or proving.

11. **“Identify”** when referring to a Person, means to give, to the extent known, the Person’s full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment.

12. **“Identify”** when referring to Documents, means to give, to the extent known, the (i) type of Document; (ii) general subject matter; (iii) date of the Document; and (iv) authors, addressees and recipients.

13. **“Identify”** when referring to an oral Communication, means to give, to the extent known, the identity of the speaker and of each Person who was present when the Communication was spoken, and the substance, date, and place of such Communication.

14. **“Facility”** means the Cherokee generating facility.

15. **“FERC”** means the Federal Energy Regulatory Commission.

16. **“PURPA”** means Section 210 of the Public Utility Regulatory Policies Act of 1978 and FERC’s implementing regulations, 18 C.F.R. Section 292.

17. “**QF**” means a cogenerator or small power producer qualifying facility under PURPA.

### **INTERROGATORIES**

1-1. Please identify, by State regulatory Commission docket number, any other Complaint or arbitration proceedings brought by LS Power or its generating facility-owning subsidiaries or affiliates in the last five (5) years relating to PURPA rights and/or contract negotiations implicating PURPA.

#### **Mr. Kurt Strunk, NERA**

1-2. With respect to Mr. Strunk's statement at page 2 of his testimony that "Several of my assignments have required that I perform in-depth analyses of power markets in the Carolinas. As a result, I am very familiar with the market, regulatory and legislative environment in which Cherokee and Duke operate," please explain in detail:

- a. the assignments that required you to perform in-depth analyses of power markets in the Carolinas;
- b. describe in detail your understanding of the "market, regulatory and legislative environment in which Cherokee and Duke operate";
- c. identify and produce any Documents responsive to a-b.

#### **ANSWER:**

1-3. With respect to Mr. Strunk's statement at page 5 of his testimony that "In 2018, Duke had sufficient lead time to defer or avoid investments in new generation capacity" please (i) explain in detail the basis for this statement, (ii) identify the specific "investments in new generation capacity" that could be avoided, (iii) confirm "Duke" refers to "DEC," and (iv) identify and produce any Documents that support your statement:

#### **ANSWER:**

1-4. With respect to Mr. Strunk's statement on page 9 of his testimony asserting that "financing . . . is also a concern for existing power projects" and that "[t]he guidance established by FERC for QFs under development has implications for QFs that are already operating," please identify:

- a. Any FERC decision or guidance of which Mr. Strunk is aware that supports your view that providing QFs a reasonable opportunity to obtain capital in order to obtain financing is applicable to operating QFs seeking to enter into a new purchased power agreement;
- b. Any state regulatory commission(s) of which Mr. Strunk is aware that have identified FERC's guidance relating to providing QFs a reasonable opportunity to obtain capital for financing as specifically being applicable to operating QFs versus new QFs under development;
- c. The Order or docket number for any FERC or state regulatory commission proceeding and identify and provide any Documents that Mr. Strunk relied upon in responding to subparts a.-b. of this request.

**ANSWER:**



1-5. With respect to Mr. Strunk's statement on page 11 of his testimony asserting that "In my experience, state regulatory commissions do act consistently in that they require that the host utility provide QFs with compensation for avoided capacity costs when the host utility can avoid, defer, or resize future investments in capacity," please:

- a. Provide a detailed discussion of Mr. Strunk's understanding of this issue, including identifying the specific state regulatory commission Orders that you believe consistently support his explanation;
- b. Identify whether Mr. Strunk is aware of any state regulatory commissions that have taken a position inconsistent with Mr. Strunk's assertion;
- c. Identify any specific state regulatory commission Orders implementing PURPA that you believe directed a host utility to "resize future investments in capacity";
- d. Identify the Order or docket number for any FERC or state regulatory commission proceeding and identify and provide any Documents that Mr. Strunk relied upon in responding to subparts a.-c. of this request.

**ANSWER:**

1-6. With respect to Mr. Strunk's statement at page 14 of his testimony that "Many utilities have found themselves holding QF contracts struck at forecast avoided cost rates that did not anticipate the subsequent gas price declines that actually occurred" please (i) explain in detail the basis for this statement, (ii) identify the specific utilities' PURPA implementation experience that informed your understanding of this fixed price risk under PURPA, and (iii) identify and produce any Documents that support your statement.

**ANSWER:**

1-7. With respect to Mr. Strunk's statement at page 6 of his testimony that "PURPA imposes a must-take obligation on electric utilities and creates a market for the output of QFs where otherwise such market may not exist or may be difficult to access" please explain whether Mr. Strunk understands that a QF must make arrangements to deliver and/or transmit its power to an electric utility in order to obligate the utility to purchase the QFs output under PURPA.

**ANSWER:**

**Mr. Nathan Hanson, LS Power**

1-8. With respect to Mr. Hanson's statement on page 6 of his testimony asserting that "PURPA guaranteed that Qualifying Facilities like Cherokee would be paid for capacity and energy based on a utility's 'avoided cost,'" please explain whether Mr. Hanson agrees that PURPA prohibits utilities from paying QFs at rates that exceed the utility's avoided costs during the future term of agreement between the utility and QF.

**ANSWER:**

1-9. With respect to Mr. Hanson's statement on page 6 of his testimony asserting that "PURPA guaranteed that Qualifying Facilities like Cherokee would be paid for capacity and energy based on a utility's 'avoided cost,'" please explain whether Mr. Hanson agrees that the costs of operating a QF or the return required by the QF's parent company or its investors to continue to operate the QF has no role in the calculation of the utility's avoided cost under PURPA.

**ANSWER:**

1-10. With respect to Mr. Hanson's statement on page 11 of his testimony asserting that "Capacity payments allow Cherokee to budget for staff, maintenance, capital investments and other needs necessary to ensure that Cherokee actually maintains the capability to run at any given time and respond to dispatch instructions from DEC," please describe in detail:

- a. Any capital investments exceeding \$100,000 made at the Cherokee Facility in the past 2 years;
- b. Any capital investments exceeding \$100,000 planned at the Cherokee Facility in the next 2 years; and
- c. Please identify and provide any Documents that Mr. Hanson relied upon in responding to subparts a.-b. of this request.

**ANSWER:**

1-11. With respect to Mr. Hanson's testimony on page 11 that DEC and DEP offering "indicative pricing" to Cherokee is "completely at odds with the concept of a LEO," please identify:

- a. The basis for this statement under PURPA;
- b. Any other state regulatory commission of which Mr. Hanson is aware that have taken the position that a utility offering a QF indicative avoided cost pricing and a reasonable period of time to execute a power purchase agreement is inconsistent with PURPA;
- c. The docket number for any state regulatory commission proceeding and identify and provide any Documents that Mr. Hanson relied upon in responding to subparts a.-b. of this request.

**ANSWER:**

1-12. With respect to Mr. Hanson's testimony on page 15 that "Duke employees, during a meeting at the Cherokee Facility on July 25, 2018, encouraged Cherokee to participate in a DEP "Capacity and Energy Market Solicitation,"" please describe:

- a. Whether Cherokee understood the DEP Capacity and Energy Market Solicitation to be a competitive solicitation that was unrelated to the Companies' obligation to purchase from QFs under PURPA;
- b. Whether Cherokee would have been able to sell its full capacity output to DEC under PURPA commencing January 1, 2021, if Cherokee had been selected in the DEP Capacity and Energy Market Solicitation.

**ANSWER:**

1-13. With respect to Mr. Hanson's statement on page 16 of his testimony asserting that "Allocating capacity from the same resource to different offtakers is completely consistent with my understanding of PURPA," please:

- c. Provide a detailed discussion of Mr. Hanson's understanding of this issue, including identifying any FERC regulations or state regulatory commission Orders that you believe support your explanation;
- d. Describe whether Mr. Hanson is aware of any state regulatory commissions that have taken a position inconsistent with his assertion;
- e. Identify any specific state regulatory commission Orders implementing PURPA that you believe directed a host utility to purchase only a portion of a QF's capacity and energy under a legally enforceable obligation for a future term;

- f. Identify the Order or docket number for any FERC or state regulatory commission proceeding and identify and provide any Documents that Mr. Hanson relied upon in responding to subparts a.-c. of this request.

**ANSWER:**

1-14. Please explain in detail the basis for Mr. Hanson's statement on page 17 of his testimony that "DEP would use its own transmission capacity to deliver power from the Cherokee Facility to DEP, and Cherokee would not incur transmission charges for that delivery." Please provide any examples of a purchasing utility under PURPA arranging for transmission service to deliver an off-system QF's power from the interconnecting utility to the purchasing utility's Balancing Authority Area. Please provide any examples of a QF not paying for transmission service to wheel its power from the interconnecting utility to the purchasing utility, where the power is being purchased pursuant to PURPA.

**ANSWER:**

1-15. Please explain in detail the basis for Mr. Hanson's statement on page 18 of his testimony that "DEP could easily add Cherokee as a network resource under its OATT, which would likely result in a zero or negligible change to DEP's network service charge, as compared to imposing point-to-point transmission charges on Cherokee."

**ANSWER:**

1-16. Please explain in detail the basis for Mr. Hanson's statement on page 25 of his testimony that "Cherokee is entitled to be deemed a network resource by Duke given their joint dispatch arrangements, such that Cherokee could deliver its power to provided energy and capacity to DEP and/or DEC in a way that optimizes Cherokee as a resource."

**ANSWER:**

1-17. During the course of negotiations since September 2018, please identify any points in the negotiation where DEC and DEP failed to provide a response to a communication from Cherokee.

**ANSWER:**

**REQUESTS FOR PRODUCTION**

1-1. Please produce copies of all data requests, requests for production, interrogatories, or other communications informally requesting discovery that have been received by Cherokee in connection with this Docket. Please produce these as soon as practicable after they are received. Please consider this an ongoing request.

**RESPONSE:**

1-2. Please produce copies of Cherokee's responses to all data requests, requests for production, interrogatories, or any other information provided by Cherokee in connection with this Docket. This includes all documents, electronic files or other attachments that were that were provided, or made available for on-site inspection. Please produce these at the same time they are provided to the requesting party, or if that is impossible, as soon as practicable thereafter.

**RESPONSE:**

1-3. Please produce any and all documents identified, referred to, or relied upon in preparing your response to Duke Energy's Second Set of Interrogatories to Cherokee.

**RESPONSE:**



1-4. Please provide all supporting analyses, data, and workpapers for the proposed rate calculations presented on pages 15-16 and further detailed in the Appendix to Mr. Strunk's testimony.

**RESPONSE:**

1-5. Please provide all supporting analyses, data, and workpapers that support Mr. Hanson's statement at page 5 of his testimony that "DEC has dispatched the plant on average approximately 60% of all hours over the last three years."

**RESPONSE:**

1-6. On page 11, Mr. Hanson's testimony asserts that "Capacity payments allow Cherokee to budget for staff, maintenance, capital investments and other needs necessary to ensure that Cherokee actually maintains the capability to run at any given time and respond to dispatch instructions from DEC." Please provide Cherokee's annual budget for 2020 for operating the Facility.

**RESPONSE:**

1-7. On page 11, Mr. Hanson's testimony asserts that "Capacity payments allow Cherokee to budget for staff, maintenance, capital investments and other needs necessary to ensure that Cherokee actually maintains the capability to run at any given time and

respond to dispatch instructions from DEC.” Please provide Cherokee’s annual budget for 2021 for operating the Facility.

**RESPONSE:**

1-8. With respect to Mr. Hanson’s testimony on page 24 that “If Cherokee is no longer economic to run, it will have to be shut down,” please provide any Documents or analyses that relate to Cherokee’s evaluation of whether to “shut down” the Facility.

**RESPONSE:**

1-9. With respect to Mr. Hanson’s testimony on page 24 that “Retirement of Cherokee would have economic consequences to its industrial 10 partner, Reddy Ice,” please provide a copy of any contract between Cherokee and Reddy Ice, as well as any Documents or analyses that relate to the impact of potential retirement of the Cherokee Facility on Reddy Ice.

**RESPONSE:**

Dated this 12<sup>th</sup> day of May 2021.

/s/Rebecca Dulin

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